

ESTTA Tracking number: **ESTTA19904**

Filing date: **11/23/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Danware Data A/S
Granted to Date of previous extension	11/24/2004
Address	Kongevejen 62 Birkerød, 3460 DENMARK

Domestic Representative	Jeffrey O. Davidson Attorney Baker & McKenzie LLP 130 E. Randolph DriveOne Prudential Plaza Chicago, IL 60601 UNITED STATES karen.a.priebe@bakernet.com Phone:312-861-2820
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Applicant Information

Application No	78246517	Publication date	07/27/2004
Opposition Filing Date	11/23/2004	Opposition Period Ends	11/24/2004
Applicant	Netopsystems AG Novalisstr. 12		

	Berlin, 10115 GERMANY
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Goods/Services Affected by Opposition

Class 042. First Use: 20010101First Use In Commerce: 20010301 All goods and services in the class are opposed, namely: Development and consulting service in the field of software and hardware technology for optimization of data volume and download management

Attachments	NETOPSYS.pdf (4 pages)
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Signature	/Jeffrey O. Davidson/
Name	Jeffrey O. Davidson
Date	11/23/2004

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application
Serial No. 78/246,517

DANWARE DATA A/S)	
)	
Opposer,)	
)	Opposition No.:
v.)	
)	
NETOPSYSTEMS AG)	
)	
Applicant.)	

NOTICE OF OPPOSITION

To: Commissioner for Trademarks
Attn: TTAB
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

In the matter of Application Serial No. 78/246,517 ("the Application") to register NETOPSYSTEMS ("the Mark") in International Class 9 by Netopsystems AG ("Applicant"), which was published in the July 27, 2004 *Official Gazette*, Danware Data A/S, a Swedish corporation, having a principal place of business at Kongevejen 62, 3460 Birkerød, Kingdom of Denmark ("Opposer"), believes it would be damaged by the registration of the Mark and therefore opposes on the following grounds:

1. Applicant seeks to register the Mark in connection with "development and consulting service in the field of software and hardware technology for optimization of data volume and download management."
2. As is set forth below, Opposer's registration for NETOP predates the Applicant's application and establishes Opposer's priority in the NETOP mark.

3. As also is set forth below, Opposer's registration for NETOP has been used in connection with computer software for use in personal computers.
4. Opposer is the owner of U.S. registration number 1,636,004 for the mark NETOP for "computer software for use in personal computers" in International Class 9, which was registered on the Principal Register on February 26, 1991. This registration was based on an application filed in the U.S. Patent and Trademark Office on November 13, 1989, and has been renewed.
5. As a result of this long continuous and substantially exclusive use of the NETOP trademark in connection with the sale of computer software for use in personal computers, the relevant consuming public has come to associate such products as originating with Opposer.
6. As a result of Opposer's extensive use for more than ten years, the NETOP trademark has achieved widespread recognition, and now evidences significant goodwill and is a valuable asset of Opposer.
7. Opposer's registered mark is valid and subsisting and is prima facie evidence of Opposer's exclusive right to use these marks in commerce in connection with the goods and services specified. This registration is incontestable and is therefore conclusive evidence of Opposer's exclusive right to use said mark in commerce in connection with the goods/services specified.
8. The services of the Applicant are similar, or closely related, to Opposer's goods. Opposer's software product is related to the product description, namely "development and consulting service in the field of software... technology for optimization of data volume and download management" covered by the Application. The similarity of the services of the Applicant to the goods which Opposer has offered for many years, likely will result in confusion as to the source, sponsorship or affiliation of the parties' respective goods and services.
9. The Mark is so similar as to create confusion because the Mark could be mistaken as a mark used by the owners of NETOP for computer software. This extension would

be natural in view of Opposer's extensive use of NETOP on computer software products for personal computers.

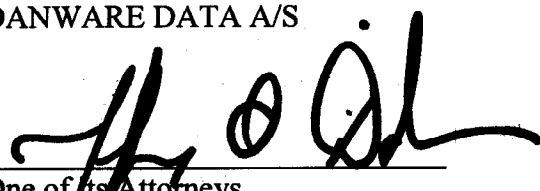
10. Because of the similarity and/or related nature of the parties' respective goods and services, the Mark covered by the Application so resembles Opposer's registered mark, as to be likely to cause confusion, or to cause mistake, or to deceive.
11. As a result of Opposer's extensive use for more than ten years, the NETOP trademark has achieved widespread recognition, and has become highly distinctive and a famous mark.
12. Opposer believes that the Mark will cause dilution of the distinctiveness of Opposer's famous registered mark pursuant to Section 43(c) of the Trademark Act of 1946, as amended, 15 U.S.C. § 1125(c).

WHEREFORE, Opposer prays that the Application Serial No. 78/246,517 be rejected, and that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of the Opposer.

Please charge the statutory filing fee of \$300.00 to our Deposit Account No. 501-649. If this amount is insufficient for any reason, please charge any shortfall, missing or excess fees to our Deposit Account No. 501-649.

Respectfully submitted

DANWARE DATA A/S



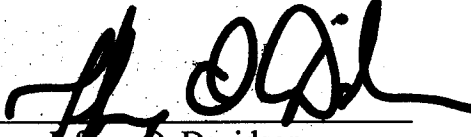
One of its Attorneys

Dated: November 23, 2004

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CERTIFICATE OF MAILING

The undersigned hereby certifies that the foregoing **Notice of Opposition** was filed electronically via the Electronic System for Trademark Trials and Appeal (ESTTA) this 23rd day of November, 2004.



Jeffrey O. Davidson

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